

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	
<b>Chris Dietrich d/b/a Dietrich Custom Pumping</b>	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO- <b>05</b>
Keokuk County	

TO: Chris Dietrich  
Dietrich Custom Pumping  
14271 200<sup>th</sup> Avenue  
Webster, Iowa 52355

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Chris Dietrich d/b/a Dietrich Custom Pumping for the purpose of resolving violations pertaining to the prohibited commercial application of manure. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Josh Sobaski, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, IA 52353  
Phone: 319/653-2856

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and Iowa Code Chapter 459 and the rules adopted or permits issued pursuant

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHRIS DIETRICH d/b/a DIETRICH CUSTOM PUMPING**

thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Chris Dietrich owns and operates Dietrich Custom Pumping. Dietrich Custom Pumping is a commercial manure application business. Iowa law requires manure applicators in Iowa to be certified. Iowa law also allows for the inspection of the records maintained by a commercial manure service.

2. On June 20, 2007, DNR Field Office 6 notified Chris Dietrich that a Commercial Manure Service (CMS) inspection would be conducted on June 28, 2007. Mr. Dietrich cancelled this meeting and the inspection was rescheduled for July 6, 2007. Mr. Dietrich cancelled the July 6 meeting and the inspection was rescheduled for July 26, 2007. This meeting was also cancelled. On July 31, 2007, DNR Field Office 6 notified Mr. Dietrich that a CMS inspection would take place at his residence on August 15, 2007.

3. On August 15, 2007, Josh Sobaski and Bert Noll, environmental specialists from DNR Field Office 6, conducted a CMS inspection at Mr. Dietrich's residence. During the inspection, Mr. Sobaski and Mr. Noll noted several deficiencies in Mr. Dietrich's obligations as a CMS representative: 1) lack of required records for some clients listed for 2005, 2006, and 2007; 2) lack of a copy of instructions for manure application provided by his clients; and 3) manure hauling equipment did not have the required information on it. Mr. Sobaski and Mr. Noll also determined that Mr. Dietrich was not properly certified to apply manure in 2006 and 2007.

4. On September 5, 2007, a Notice of Violation letter was sent to Mr. Dietrich for the violations discovered during the CMS inspection on August 15, 2007. The letter required that Mr. Dietrich immediately discontinue applying manure until he was properly certified and the applicable fees had been paid. The letter also informed Mr. Dietrich that the violations were being referred for possible enforcement. On November 2, 2007, Mr. Dietrich became properly certified and submitted the applicable fees to the DNR.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHRIS DIETRICH d/b/a DIETRICH CUSTOM PUMPING**

2. 567 IAC 65.19 (1) states that a commercial manure service, a commercial manure service representative, or a confinement site manure site applicator shall not apply dry or liquid manure to land, unless the person is certified. During the CMS inspection on August 15, 2007, DNR Field Office 6 environmental specialists determined that Mr. Dietrich was not certified to apply manure in 2006 and 2007. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.19(8)"a" requires that a commercial manure service must maintain records of manure disposal operations for a period of three years. This provision also requires that the certified commercial service maintain a copy of instruction for manure application provided by the owner of the animal feeding operation. During the CMS inspection on August 15, 2007, DNR Field Office 6 environmental specialists determined that Mr. Dietrich failed to have records for some clients listed for 2005, 2006, and 2007. Mr. Dietrich also failed to have the required copies of the instructions. The above-mentioned facts indicate violations of this provision.

4. 567 IAC 65.19(8)"e" requires that any vehicle used by the certified commercial service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle. During the CMS inspection on August 15, 2007, DNR Field Office 6 environmental specialists noted that the required certification number, the representative's name, and the representative's address were not on the manure hauling equipment. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Mr. Dietrich agrees to do the following:

1. Pay an administrative penalty of \$4,000.00, within 30 days of the date the Director signs this administrative consent order; and

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHRIS DIETRICH d/b/a DIETRICH CUSTOM PUMPING**

may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Dietrich gained an economic benefit over certified applicators. Mr. Dietrich saved time and money by not completing applicable certification training/testing and by not paying all applicable certification fees. Therefore, \$500.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The certification program is an important component of the regulatory laws relating to animal feeding operation, and failure to comply threatens the integrity of this program. Therefore, \$2,500.00 is assessed for this factor.

Culpability -- All commercial manure applicators have a duty to remain knowledgeable of the DNR's requirements. Moreover, the certification requirements have been widely publicized in this industry. Therefore, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

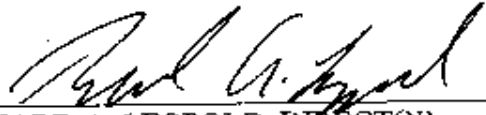
This administrative consent order is entered into knowingly and with the consent of Mr. Dietrich. For that reason Mr. Dietrich waives the rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

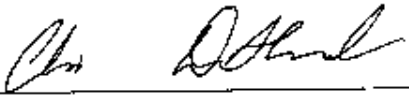
Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: CHRIS DIETRICH d/b/a DIETRICH CUSTOM PUMPING**

described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 31 day of  
January, 2008.

  
\_\_\_\_\_  
Chris Dietrich  
Dietrich Custom Pumping

Dated this 23 day of  
January, 2008.

No facility #; Kelli Book, Josh Sobaski, Ken Hessenius, Gene Tinker, EPA, VIII.D.4